

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BOARHEAD FARM AGREEMENT GROUP,	)	
	)	
Plaintiff,	)	Civil Action No. 02-3830
	)	
v.	)	
	)	
ADVANCED ENVIRONMENTAL	)	
TECHNOLOGY CORPORATION, ET AL.,	)	
	)	
Defendants.	)	
_____	)	

**UNITED STATES' RESPONSE TO PROPOSED  
FIRST CASE MANAGEMENT ORDER**

Under the proposed First Case Management Order ("CMO"), Phase I of this litigation is to be a preliminary stage concerning a prima facie demonstration of each Defendant's status, if any, as a potentially responsible party ("nexus phase") as a predicate for "determin[ing] whether alternatives to litigation, including [alternate dispute resolution] will be acceptable to the parties." CMO at 1-2. Under paragraph 5 of the CMO some "persons with knowledge of the operations of the Site and/or the operations of DeRewal entities ('Site Witnesses')" will be deposed for the limited purposes of this nexus phase. Id. at 6.

Deposition of these Site Witnesses with respect to liability<sup>1/</sup> and any allocation of response costs among the parties may, in all probability, be necessary at a later phase of this litigation. Accordingly, the United States Department of the Navy believes that it is necessary and appropriate to include the following provision in any CMO entered by this Court in order to ensure that the ability to obtain such deposition testimony in a later phase of the case is not constrained by nexus phase depositions:

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<sup>1/</sup> The CMO addresses limited nexus phase discovery rather than full discovery on liability.

Without leave of Court, in a later phase of this litigation the parties may notice and depose any witness initially deposed in Phase I. Any depositions taken in Phase I shall not limit the number of depositions that may be taken in a later phase of this litigation.

Wherefore, the United States Department of the Navy respectfully requests that the above provision be included in any CMO entered by this Court.

Respectfully submitted,

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